

Wojdan v. Canada (Attorney General), 2022 FCA 120 (CanLII)

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CORAM:

**BOIVIN J.A.
LASKIN J.A.
LEBLANC J.A.**

BETWEEN:

ADAM WOJDAN, ALANA MATHESON, ALEXANDER NEVIN HOBBS, ALEXANDRA BODE, ALEXANDRA JANE HARRISON, ALICIA DIAZ DE LA SERNA, ALLAN EMMETT NOLAN, AMANDA JOANNE WELLS, ANA LUCIC, ANA POTAKIS, ANASTASIA DALY, ANDREA B. MILLER, ANDREEA LIVIA MODREA, ANDRÉE-FRANCE PAGÉ, ANGELA NATHALIE GUENTERT, ANIK MARIE-LOU ARAND, ANNA DOROTA YAARY, ANNA MAGDALENA RATAJCZAK, ASHLEY GAIL BRUNET, AUDREY GENEVIEVE LACASSE, AUTUMN MARIE CARDY, BARBARA ANN BERGSMA, BELINDA KATO, BIANCA BOUCHER, BRANDON BRUCE LEO SMITH, BRANDON JAY MERRILL, BRENT R EPPS, CALVIN BEDROS, CALVIN JOHN KOTOWICH, CARL THIESSEN, CARLY VIOLA LARSEN, CAROL-ANN MARY DODD, CAROLEE ANNE STEWART, CATALIN MIHAI OBREJA, CATALINA CAZAN-MACISANU, CATALINA SOLOMON, CHAD MICHAEL GAGNON, CHARLES-PHILIPPE SAJOUS, CHRISTIAN FESTEJO, CHRISTIAN JOSEPH ANDRÉ GAGNÉ, CHRISTINE SERBAN, CHRISTINE SUSAN GRAY HUTCHINS, CHRISTINE SYLVIA DANIS, CHRISTOPH PHILIPPE DAUDIN, CHYLOW NADINE HALL, CINDY MILDRED DERAICHE, CLAIRE BRETON-PACHLA, COREY GERALD JOSEPH GAUTHIER, COREY JOHN CHARLES CRABTREE, CORY LALONDE, CRAIG STUART MCGUIGAN, DAISY-IVY BODE, DANA TOMA, DANIEL EMANUEL ANINOIU, DANIEL GEORGE GERALD KRAUTER, DANIEL LIONEL GASTON GIROUX, DANIEL NATHAN BUDD, DANIEL WILLIAM ADSHADE, DANNY ALLEN EDWARD HONE, DAVID JOHN DEMPSTER, DAVID MC NICOLL, DEAN ALLAN LEROY DAVIS, DEANNA GETZ, DEBBIE LYNN PREVOST, DENIS LECOMPTE, DENISE GABRIELLA NICOLE RAMSANKAR, DERRICK ANTHONY BELL, DÉSIÉE-LYNN ROCHON, DHEEPA MURTHY, DIANNE EVERLYNE MARIE FLYNN, DONEEN COXE, DONNA JUNE STAINFIELD, EDMUND MCLAUGHLIN, ELAINE J. HEYINK, ELENA PALMIERI, ELIZABETH JOSEPHINE DROCHOLL, EMILIE GABRIELLE CYR, FARRAH ESPERA, FILIPPAS LAVIDAS, FRANCE RENÉE PARADIS, FRANCIS EMOND, FRANCK ARMEL DIEDRO, FRANK MOURA RODRIGUES, GAËL BRASSARD, GIUSEPPE SALERA, GIUSEPPINA TRAPANI, GORDON WILLIAM HILL, GREGORY J D DALE, HAMID NAGHDIAN-VISHTEH, HANNA "JOHN" GEBARA, HEIDI SCHENKEWITZ, HOLLY ANN JEFFERD, IKECHUKWU PRECIOUS ARUNGWA, JACOB ALLEN ELLIOTT, JACQUELYN ANN STEVENSON, JADE BERGERON, JAMES EDISON JOHN SNIVELY,

JASBIR SINGH KAILA, JAY CHRISTOPHER SINHA, JEFFREY LADOUCEUR, JENNIFER ANN THIESSEN, JENNIFER LYNN MCKEOWN, JENNIFER LYNNE STANNARD, JENNIFER MARIE JUST, JÉRÉMY BENOIT, JESSICA LEIGH WADDELL, JILI LI, JOHANNE LAROCHE, JOHN DONALD MARSHALL JR., JONATHAN CHARLE SERGIUS MANKOW, JONATHAN DAVID GIROUX, JONATHAN TASKER, JOSEE SIVRET, JOSEPH BREFNI WARREN MACDONALD, JOSHUA NATHANIEL TORTORICI, JULIE BLOUIN, JULIE DIANE SOOK HARN MA, JULIE DONNA MOUNCE COMBER, KALIN KOSTADINOV STOYANOV, KARINE MARIE ELIZABETH GÉLINAS, KATHLEEN BRIDGET MULHOLLAND, KELLY ANN GRENIER, KELSEY WARNOCK, KERSTIN SYKES, KEVIN LYSIUS CÔTÉ, KHRISTEN VASSEUR, KIMBERLEY ANN GIROUX, KIMBERLEY NATASHA JOY LANE, KIMBERLY ANN LISSEL, KIRSTEN PATRICIA HALL, KRISTEN ALEXANDRA SOO, KRISTINE GRAVELLE, KYLE ROYCE STUPPLE, LANCE AARON STUART DIXON, LAURA PALMA HECIMOVIC, LAURA SUZANNE YKEMA, LILLIAM SCHULZ BECHARA, LINDA BENKAIIOUCHE, LINDSAY VIRGINIA DAGENAIS, LISA JANE LAWR, LLOYD WILLIAM SWANSON, LOU ANN F. GOVEAS, LUC LAFLEUR, LUCAS BRETT REID, LUKE BEDROS-ZAVODNI, LYANE Y. GIROUX, LYNE JOSEE SURETTE, MANON TREMBLAY, MARC HENRY DOMINIQUE, MARIE BETHIE THIMOT, MARIE CLAIRE SONIA CARIGNAN, MARIE GENEVIEVE PIERRETTE BERGERON, MARIE NICOLE DOROTHÉE LISE HOUDE, MARIE-CLAUDE PAGÉ, MARIE-FRANCE LADOUCEUR, MARILYN DUFRESNE, MARK LAVAL JAEKL, MARTINE JOSEPH, MARVIN ROLANDO CASTILLO, MARY DEANNA THOMPSON, MARY ELLEN RENAUT, MARY NATALIE DAWN VELLENGA, MARY-ANN HUE, MATHIEU LEMAY, MATTHEW BRADEN CAPELL, MÉLISSA HÉLÈNE GAUTIER, MELISSA SHARON COOPER, MELISSA SUZANNE MARTIN, MERIEM MOKAIRITA-LAMSSAHHAL, MESLISSA RICCIARDELLI, MICHAEL ALBERTA FALCONE, MICHAEL DOUGLAS ANDERSON, MICHAEL ERIC LLOYD, MICHAEL STEVEN GENDRON, MICHAEL THEODORE SHOSTAK, MICHAL WALCZAK, MICHELLE LALANDE, MONA ABRAHAM KIAME, MONIQUE BRUYERE, MORGAN ANDREW WATTS, NADINE KASPICK, NANCY ANNE DUNPHY, NATASHA MARIE BUDY, NATHALIE LACROIX, NICHOLAS GUENETTE, NICQUES MWILAMBWE YUMBA, OLIVIA LOUISE JENKINSON, PABLO ROMAN DICONCA, PANAGIOTA STAPPAS, PASCAL JOSEPH RAPHAEL MUSACCHIO, PATRICK HILBORN, PATRICK T DAVIDSON, PAWEL JAN SZOPA, PIERRE-MARC CÔTÉ, RADOSLAW WERONSKI, RAELEEN GAY KERELIUK, RAIMONDI ROSEMARY AMALIA STEFANIA, REID HOWARD MILLER, RENÉE JOELLE THÉORÊT, RENEE LEEANN FLEURY, RIAN BROOKE BABINEAU, RICHARD KENNETH GABBEY, RICHARD MICHEL JOSEPH BARRETTE, ROBERT BRUCE COSMAN, ROBERT JOHANNAS DUECK, ROBERT MANDIC, ROBERT WEIR ROBSON, ROBY ELAINE MCKELVIE DUNN, ROLAND MICHAEL CHARBONNEAU, ROSEDORE GOTTFRIEDE KANITZ, ROXANNE MARIE JOHANNE EVE LANTHIER, ROXANNE ROBERTSON, RYAN LAWRENCE SCHIPPER, SABRINA MICHELLE CANTIN, SABRINA NICOLE FONTANA, SABRINE BARAKAT, SALINNA BRANDY LACHANCE, SALMA TMOULIK, SAMANTHA JOYCE CURTIS, SANDRA ANNE HALEY, SANDRA ELAINE WHITING, SARAH ABDULJABBAR ABDULLATIF ALDOSARY, SASA DANICIC, SCOTT FAST, SEAN MICHAEL RUSENSTROM, SÉBASTIEN PROST, SESA RABIDEAU, SÉVERINE HUGUETTE PARNAUDEAU, SHELLEY HARVEY, SHELLY ANN THERIAULT, SHERIE DAWN CRAIK, SHRIKAN SHARMA, SISTINO PAOLO COLATOSTI, SONIA PARISIEN, STÉPHANE LEBLANC, STÉPHANE PARISIEN, STEPHANE ROBY JOSEPH DUBÉ, STEPHANIE CHARLENE MCCANN, STEPHEN HOWARD KELLY, STEVEN BOLDUC, STEVEN RACINE, SUZAN CHERIE MOTTTL, SVETLANA SHACHKINA, SYLVI VERISSIMO, SZABOLCS PALL, TAMMY LYNN MYER, TANIA MICHAUD, TANJA DANICIC, THERESA GELDART, TIMOTHY JOHN HIEBERT, TRISTAN GRAVEL, TYLER MARK ALEXANDER BORG VÉRONIQUE SANTOS, WE SEONG LIM, WENDY DENNIS, YANNICK VEZINA, ZACHARY WILLIAM ANTHONY LINNICK

Appellants

and

ATTORNEY GENERAL OF CANADA

Respondent

Heard by online video conference hosted by the Registry

on June 22, 2022.

Judgment delivered from the Bench at Ottawa, Ontario, on June 22, 2022.

REASONS FOR JUDGMENT OF THE COURT BY:

BOIVIN J.A.

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and

ATTORNEY GENERAL OF CANADA

Respondent

REASONS FOR JUDGMENT OF THE COURT

(Delivered from the Bench at Ottawa, Ontario, on June 22, 2022).

BOIVIN J.A.

[1] The appellants appeal a decision of the Federal Court (*per* Fothergill J.) rendered on December 2, 2021 (2021 FC 1341). The Federal Court declined to grant an interlocutory injunction rendering inoperative the Policy on COVID-19 Vaccination for the Core Public Administration (CPA) Including the Royal Canadian Mounted Police (the Policy) issued by the Treasury Board of Canada on October 6, 2021.

[2] The Federal Court concluded that the appellants had not met the test for an interlocutory injunction, failing to establish that there was a serious issue to be tried or that they would suffer irreparable harm if the injunction was not granted (*RJR-MacDonald Inc. v. Canada (Attorney General)*, 1994 CanLII 117 (SCC), [1994] 1 S.C.R. 311, 111 D.L.R. (4th) 385 at page 334). Consequently, the Federal Court declined to grant the injunction.

[3] Following the filing of the appeal on December 9, 2021, the Government of Canada announced on June 14, 2022 that the Policy will be suspended as of June 20, 2022 and that public servants who were subject to administrative leave without pay, as a result of the Policy, may resume regular work duties with pay. Thus, federal employees of the CPA are no longer required to be vaccinated, as a condition of employment.

[4] We are all of the view that this appeal is now moot, as the Policy that the appellants seek to suspend is no longer in force (*Borowski v. Canada (Attorney General)*, 1989 CanLII 123 (SCC), [1989] 1 S.C.R. 342, 57 D.L.R. (4th) 231). Having considered the *Borowski* factors, we all agree that the exercise of our discretion to hear this case is not warranted.

[5] Therefore, the appeal will be dismissed without costs.

"Richard Boivin"

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET:

A-344-21

STYLE OF CAUSE:

ADAM WOJDAN ET AL. v. ATTORNEY GENERAL
OF CANADA

PLACE OF HEARING:

BY ON LINE
VIDEOCONFERENCE

DATE OF HEARING:

JUNE 22, 2022

REASONS FOR JUDGMENT OF THE COURT BY:

BOIVIN J.A.

LASKIN J.A.

LEBLANC J.A.

DELIVERED FROM THE BENCH BY:

BOIVIN J.A.

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Sarah Miles

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